Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1995

AARON SHALOM GENISH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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38 pp

QUESTION PRESENTED FOR REVIEW

Whether a defendant's response to a government official's question that can be truthfully answered either affirmatively or negatively constitutes a violation of Title 18, Section 1001 when the response given is simultaneously both affirmative and negative.

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OPINION BELOW

The Eleventh Circuit Court of Appeals' unpublished Opinion was filed on August 29, 1995. See Appendix pp. 1-9.

JURISDICTION

The judgment petitioner seeks to have this Court review was entered on August 29, 1995. A Petition for Rehearing was filed and denied by the Eleventh Circuit on November 21, 1995. See Appendix p. 11. On February 7, 1996, the Eleventh Circuit Court of Appeals issued an Order staying its mandate until 30 days from the date of that Order, or until March 8, 1996. See Appendix p. 12. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This petition involves the right to due process under the Fifth Amendment and a right to a fair trial under the Sixth Amendment of the United States Constitution.

This petition is based, as well, on Title 18 of the United States Code, Section 1001, which provides, in pertinent part, as follows: Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or cover up by any trick, scheme, or device a material

fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both.

STATEMENT OF THE CASE

On April 2, 1993, a federal grand jury in Ft. Lauderdale, Florida returned a 14-count superseding indictment charging petitioner in Count I of using a counterfeited United States passport in violation of 18 U.S.C. §1543; in Count II of falsely representing himself to be a citizen of the United States in violation of 18 U.S.C. §911; in Count III of making a false and written declaration on a United States Customs form concerning his citizenship in violation of 18 United States Code §1001; in Count IV of making false verbal statements to an officer of the Immigration and Naturalization Service in violation of 18 United States Code §1001; and in Counts V through XIV of having, on ten separate occasions, used and possessed visas which had been obtained by fraud, in violation of 18 United States Code §1546.

The case was tried to a jury in January 1994. At the conclusion of the government's case, the District Court granted the petitioner's motion for judgment of acquittal as to Counts V through XIV, but denied the motion as to Counts I through IV. A jury thereafter returned a verdict of guilty on Counts I through IV.

On June 24, 1994, the petitioner was sentenced to a term of three months imprisonment with a period of two years supervised release and fined $5,000.00 (R2:88). On February 28, 1996, GENISH surrendered to the U.S. Marshal for execution of his sentence.

The Eleventh Circuit Court of Appeals affirmed MR. GENISH's conviction in an unpublished Opinion filed on August 29, 1995. The Eleventh Circuit denied a petition for rehearing on November 21, 1995.

This petition is concerned with the propriety of MR. GENISH's conviction of Count IV of the indictment, a violation of Title 18 United States Code §1001 alleged to have occurred on May 6, 1991.

STATEMENT OF MATERIAL FACTS

On October 30, 1990, AARON GENISH entered the United States Customs and Immigration checkpoint at Paradise Islands in the Bahamas, returning to the United States. He presented to Inspector Francisco Velasco of the Immigration Service a United States passport (Trial transcript, 63-64). Because of the passport's appearance, Velasco thought the passport was unusual and questioned GENISH (T.T. 64). GENISH, however, had trouble speaking English (T.T. 119). Nonetheless, Velasco learned in his conversation that GENISH had acquired the passport trough a friend (T.T. 66-67).

Because of his suspicions, Velasco refused to allow GENISH to board his plane and told him to return the following morning (T.T. 69).

GENISH returned the following day and, because Velasco had not received any word from the state department as to the validity of the passport, he allowed GENISH to fly to Ft. Lauderdale, where Velasco thought a further inspection would occur. That did not happen, however, and GENISH returned to the United States without any further difficulty (T.T. 71-72). Shortly afterwards, GENISH sought the advice of an attorney, Jordan Bittel, as to the validity of the passport (T.T. 232). Bittel told GENISH that he could think of no valid reason for GENISH to have the passport and not to use it again (T.T. 235). The passport was counterfeit.

On May 6, 1991, GENISH was again returning to Florida from the Bahamas when he presented Inspector Velasco with his Israeli passport (T.T. 73). Velasco recognized GENISH and asked him if he had his American passport. The following colloquy, according to Velasco, occurred:

Question (by Prosecutor):	What did you ask him?
Answer (by Velasco):	I asked him if he had his American passport.
Q:	What did Mr. Genish say?
A:	He said – he varied at the answer. He said he didn't have one, then it was his brother who had an American passport. And that he

did have one, but it was in Las Vegas.

Q: That who had one in Law Vegas?

A: He did.

Q: Mr. Genish had one in Law Vegas?

A: Yes.

Q: Can you tell whether or not Mr. Genish represented himself to be an American citizen, even though he had this Israeli passport. . . .

A: On the second occasion, he presented himself as an Israeli citizen under the E1 classification.

Q: All right, did he make any representation as to whether or not he was an American citizen?

A: Yes. I believe in the end, basically, indicated he was a dual citizen, U.S. and Israeli.

(T.T. 74-75)

LEGAL ARGUMENT

WHETHER A DEFENDANT'S RESPONSE TO A GOVERNMENT OFFICIAL'S QUESTION THAT CAN BE TRUTHFULLY ANSWERED EITHER AFFIRMATIVELY OR NEGATIVELY CONSTITUTES A VIOLATION OF TITLE 18, SECTION 1001 WHEN THE RESPONSE GIVEN IS SIMULTANEOUSLY BOTH AFFIRMATIVE AND NEGATIVE.

The conversation outlined above constitutes the basis for the charge contained in Count IV of the superseding indictment, which reads, in pertinent part, that GENISH "stated he never had a United States passport, but has a brother with the same name who uses a United States passport. The defendant then insisted he did hold a United States passport in addition to an Israeli passport because he held dual citizenship in the United States, as well as in Israel. In truth and in fact, and as the defendant then and there well knew, he purported to lawfully hold a U.S. passport on October 30, 1990 as set forth in Count I of this indictment, and the defendant is a native of Libya and citizen of Israel, who at no time has been a citizen of the United States; in violation of Title 18, United states Code, §1001." See Appendix pp. 15-16.

Clearly, the government was attempting to allege in Count IV that the defendant was lying on May 6, 1991 when he denied having a United States passport. In this count, the government specifically references the defendant's previous statements of October 30, 1990, wherein he states that he did have a United States passport. The government went to a great deal of trouble to prove, however, that in reality, the defendant never had a valid United States passport. Thus, to accuse the defendant of

lying on May 6, 1991, when he denied having such a passport is both illogical and inconsistent.

That GENISH later acknowledged to Inspector Velasco on May 6, 1991 that he had a United States passport in Las Vegas was obviously related to Velasco's inquiries about the passport that he had had in October of 1990. Again, GENISH's admission to Inspector Velasco as to the possession of that passport, one he had been told by his attorney not to use and one that the government proved was counterfeit, cannot be considered a misrepresentation by GENISH. In fact, he did have that passport. Thus, GENISH's denial of his having a United States passport and his acknowledgement of having the United States passport that was the subject of this prosecution are both truthful statements. These statements cannot then be the basis for his conviction of Count IV.

Although the government has alleged that MR. GENISH stated on May 6, 1991 that his brother held an American passport, it made no effort to prove that this statement was false. Clearly, then, this could not have been the basis for GENISH's conviction of Count IV.

The only remaining allegation made by the government is that GENISH stated on May 6, 1991 that he was a citizen of both the United States and Israel when, in fact, he was not and has never been a citizen of the United States. While the government made that allegation, it certainly did not prove that GENISH ever made these statements. Rather, all the government could offer in this regard was the testimony of Agent Velasco that it was his *belief* that this was what GENISH, a man whom he acknowledged having difficulty understanding, intended

to say. In other words, the government did not prove that GENISH actually made this statement.

This Court, in *United States v. Gaudin*, 115 S.Ct. 2310 (1995), stated that the "Fifth amendment to the United States Constitution guarantees that no one will be deprived of liberty without 'due process of law'; and the Sixth, that '[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.' We have held that these provisions require criminal convictions to rest upon a jury determination that the defendant is guilty of every element of the crime with which he is charged beyond a reasonable doubt." *Id.* at 2313. *Gaudin* was a case involving a prosecution for a violation of Title 18, United States Code §1001, wherein this Court was asked to determine whether or not the materiality of a statement allegedly false was an issue for decision by the court as a matter of law or by a jury as a matter of fact. This Court concluded that the issue of materiality is one that must be decided by a jury.

Though the jury in MR. GENISH's case did convict him of making a false statement on May 6, 1991, as alleged in Count IV, that conviction does not stand judicially scrutiny. MR. GENISH's apparently contradictory statements on May 6, 1991 concerning his having or not having a United States passport have been shown not to be contradictory at all. He did not have a valid United States passport, as the government proved. He did, however, have physical possession of a counterfeit United States passport. Given these facts, neither of his answers can be deemed to be false.

With regard to the allegation that he represented himself on May 6, 1991 to be a dual citizen of both Israel and the United States, the government was not able to prove that that statement was ever made. Rather, the government could offer only Agent Velasco's "belief" that that is what GENISH "intended" by his statements. Given GENISH's poor English and Inspector Velasco's admitted difficulty in understanding him, one cannot conclude by proof beyond a reasonable doubt that this statement was ever made. A sufficiency of evidence review involves an assessment as to whether or not the evidence presented at the trial can support any rational determination of guilt beyond a reasonable doubt. See *Glasser v. The United States*, 315 U.S. 60, 80, 62 S.Ct. 457, 469 (1942). Using this standard. GENISH has established that the evidence of his conviction of Count IV was insufficient as a matter of law.

CONCLUSION

GENISH has shown that his statements on May 6, 1991, while on their surface inconsistent, are not inconsistent at all. Further, he has shown that these statements were not false. His conviction of a violation of Title 18, United States Code, §1001 for his statements made to Agent Velasco on May 6, 1991, as alleged in Count IV of the superseding indictment, should and must be reversed.

DATED this 7th day of March, 1996.

FRANK J. CREMEN, ESQ.
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Las Vegas, Nevada 89101
Attorney for Petitioner

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 94-4712
Non-Argument Calendar

D. C. Docket No. 92-6173-CR-JAG

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHALOM GENISH,
a/k/a Aaron Shalom Genish,
a/k/a Shalom Aaron Genish,
a/k/a Aarom Genish,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(August 19, 1995)

Before ANDERSON, BIRCH and CARNES, Circuit Judges

PER CURIAM:

Shalom Genish appeals his conviction for passport fraud and false statements in violation of the immigration laws on the basis of sufficiency of the evidence.[1] Genish,

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[1] Genish was convicted of using a counterfeit United States passport in violation of 18 U.S.C. § 1543, falsely representing himself to be a citizen of the United States in violation of 18

an Israeli citizen who headed one of the largest construction companies there, was born in Libya.[2] He first traveled to the United States in 1972; prior to 1990, he entered the United States at least thirty times in connection with his business investments in this country.[3] For these pre-1990 trips, Genish entered the United States with his Israeli passport and non-immigrant "E visa," which enabled him to travel to and to reside in the United States,[4] but which also involved scrutiny upon every entry into the United States.

In 1990, Genish's partner in a Florida flea market, paid $1,000 to obtain for Genish an American passport. Genish received the passport and a new Social Security card in the mail. Although Genish testified that he did not have a high opinion of his partner, he also testified that he believed the passport to be genuine, and that he was a United States citizen.

On October 30, 1990, immigration and Naturalization Service ("INS") Inspector Francisco Velasco at Paradise

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U.S.C. § 911, and falsely stating on a United States Customs declaration form that he was a citizen of the United States as well as falsely making verbal statements to the Immigration and Naturalization service in violation of 18 U.S.C. § 1001.

[2] All factual information herein results from testimony and documentary evidence adduced at trial.

[3] Genish invested $2,000,000 in a flea market in Opa Locka, Florida, the ownership of which he shared with a partner. He also had other business interests in Las Vegas, Nevada.

[4] Genish began residing in the United States in 1986. He built a home in Plantation, Florida; he also obtained a Florida driver's license, a Social Security card, and he paid United States income tax.

Island, Bahamas, who was assigned to check passengers returning to the United States after an evening of gambling, suspected that Genish's passport was counterfeit because the color and the United States coat of arms were unusual, and Genish's birthplace was misspelled as "Libia." Genish verbally acknowledged that he was a United States citizen; he later indicated that he was a citizen of both Israel and the United States. Genish also had executed a United States Customs declaration form on October 30, 1990. Thereon, he answered "yes" to the declaration that "I am a U.S. Citizen if No, Country: ___." The Customs form concluded with the admonishment: "I have read the above statements and have made a truthful declaration," following which Genish signed his distinctive signature, which appears on the counterfeit United States passport, visa applications and his Florida driver's license. Genish reacted angrily to Inspector Velasco's inquiries concerning his United States citizenship and passport.

Although Inspector Velasco detained Genish until the next day, he then allowed Genish to fly to Fort Lauderdale in anticipation of reinspection there. Through oversight or inadvertence, no further inspection occurred and Genish reentered the United States. Following this incident, Genish showed his passport to his American attorney, who told him not to use it again. The attorney testified that he knew of no reason that would entitle Genish to have a United States passport.

On May 6, 1991, Genish again appeared before Inspector Velasco at the Customs pre-clearance checkpoint at Paradise Island, Bahamas. When Genish presented an Israeli passport bearing a United States visa,

Inspector Velasco recalled his earlier encounter with Genish and asked if he had his American passport with him. Inspector Velasco testified that Genish gave contradictory answers. First he denied having an American passport; he then said that it was his brother who had an American passport. Finally, he admitted having an American passport, but he stated that it was in Las Vegas. On this occasion, Genish said that he was an Israeli citizen, but additionally indicated that he was a dual citizen of the United States and Israel.

In contrast to Genish's confident demeanor on October 30, 1990. Inspector Velasco testified that Genish looked and acted "really scared." 33-76. Genish also was surrounded with an entourage of bodyguards who interfered with Inspector Velasco's inquiries by stepping between him and Genish and talking loudly. Inspector Velasco summoned the Bahamian police to keep the bodyguards away so that he could finish questioning Genish.

Although Genish was permitted to reenter the United States on May 6, 1991, his immigration status was referred for an INS administrative hearing. At this hearing, Genish, represented by counsel, surrendered his American passport, which a forensic document examiner confirmed to be counterfeit. The laminated biographical page containing Genish's photograph, identifying information, and the seal of the United States were not genuine and had been superimposed. Certified documents revealed that the passport number appearing on the biographical page of Genish's passport belonged to William Lane Hall, a United States citizen, and that Genish was not a United States citizen. Both on October 30, 1990, and

May 6, 1991, Inspector Velasco conversed with Genish in English, and, when Genish subsequently was arrested at his home, he spoke with the special agent without the assistance of an interpreter and likewise testified at trial.[5] On cross-examination, Genish admitted that he was not an American citizen.

Whether sufficient government evidence supports a conviction is a question of law subject to *de novo* review. *United States v. Keller*, 916 F.2d 628, 632 (11th Cir. 1990), *cert. denied*, 499 U.S. 978, 111 S.Ct. 1628 (1991). "To determine whether sufficient evidence supports the conviction, we must view the evidence in the light most favorable to the government and decide whether a reasonable fact finder could have reached a conclusion of guilt beyond a reasonable doubt." *United States v. Herrera*, 931 F.2d 761, 762 (11th Cir. 1991), *cert denied*, 503 U.S. 972, 112 S.Ct. 1588 (1992). "All reasonable inferences must be drawn in favor of the jury's verdict," and "credibility choices in deciding which version of a story to believe are a matter for the jury." *United States v. Cole*, 755 F.2d 748, 755 (11th Cir. 1985).

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[5] Genish has maintained that he understands only a little English, that he does not speak the language, and that he is unable to read or to write English. Thus, he argues that he could not have understood questions asked of him by INS agents or on immigration forms. Nevertheless, he apparently completed his United States Customs declaration form in English on October 30, 1990. Further, Genish routinely consulted with American attorneys and accountants concerning his business interests, talked in English with a contractor concerning building his house, watched television in English, and his wife and school-age children spoke English.

"Whoever willfully and knowingly uses, or attempts to use . . . any . . . false, forged, counterfeited, mutilated, or altered passport or instrument purporting to be a passport" violates section 1543, and "[w]hoever falsely and willfully represents himself to be a citizen of the United States" violates section 911. 18 U.S.C. §§ 1543 & 911.We have held that the elements that must be proved to sustain a conviction under section 1001, making a false verbal or written statement in any matter within the jurisdiction of a federal department or agency, are: " '(1) a statement, (2) falsity, (3) materiality, (4) specific intent, and (5) agency jurisdiction.' " *United States v. Gafyczk*, 847 F.2d 685, 690 (11th Cir. 1988) (quoting) *United States v. Lawson*, 809 F.2d 1514, 1517 (11th Cir. 1987)). By choosing to testify, Genish incurred the risk that he might bolster the government's case. *United States v. Bennett*, 848 F.2d 1134, 1139 (11th Cir. 1988); *see McGautha v. California*, 402 U.S. 183, 215, 91 S.Ct. 1454, 1471 (1971) (recognizing that a defendant should weigh the "pros and cons in deciding whether to testify"). Indeed, "a defendant's implausible explanation may constitute positive evidence in support of a jury verdict." *Bennett*, 848 F.2d at 1139.

Genish has not contested the facts that he possessed and used a counterfeit passport; he also has acknowledged that he is not an American citizen. Additionally, he verbally represented himself to INS Inspector Velasco to be an American citizen and admits that he signed a United States Customs declaration form on October 30, 1990, whereon he made a written representation that he was an American citizen. He further concedes that he told Inspector Velasco that he was a citizen of both the United States and Israel.

Although Genish asserts that there was insufficient evidence adduced at trial to prove his criminal intent, we find ample evidence in this unassailable record to support the jury's verdict of guilt as to sections 1543, 911 and 1001. Reason and common sense dictate that a wealthy international businessman, who had resided in the United States since 1986 and possessed an Israeli passport with a non-immigrant American visa, would not unknowingly be in possession of a counterfeit passport for which another paid $1,000 to obtain for him. It is unlikely that such a successful entrepreneur would inadvertently, mistakenly or accidently possess and present a counterfeit passport, bearing his picture and misspelling his birthplace. Genish's reactions when questioned by INS Inspector Velasco on the two occasions in question belie his assertion that he thought that the passport was legitimate.

The jury reasonably could have concluded that Genish deliberately obtained the counterfeit passport that he used to facilitate his entry into the United States without scrutiny, and that he made verbal and written false statements in violation of INS laws to shroud his criminal intent. The jury also could have viewed Genish's self-serving consultation with his attorney following his discovered use of a counterfeit passport as part of his own continuing effort to obfuscate his criminal conduct. The jury's verdict shows that it did not believe Genish's explanatory testimony. On the basis of this record, which supports the jury's verdict, we AFFIRM.

THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 94-4712
Non-Argument Calendar

D. C. Docket No. 92-6173-CR

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHALOM GENISH,
a/k/a Aaron Shalom Genish,
a/k/a Shalom Aaron Genish,
a/k/a Aarom Genish,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

Before ANDERSON, BIRCH and CARNES, Circuit Judges.

JUDGMENT

(Filed Aug. 29, 1995)

This cause came to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was taken under submission by the Court upon the record and briefs on file, pursuant to Eleventh Circuit Rule 34-3;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of conviction of the said District Court in this cause be and the same is hereby AFFIRMED.

Entered: August 29, 1995
For the Court: Miguel J. Cortez, Clerk

By: /s/ Karleen McNobel
Deputy Clerk

ISSUED AS MANDATE: 12/4/95

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 94-4712

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHALOM GENISH,
a/k/a Aaron Shalom Genish,
a/k/a Shalom Aaron Genish,
a/k/a Aarom Genish,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(Filed Nov. 21, 1995)

BEFORE: ANDERSON, BIRCH and CARNES, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by Appellant, Shalom Genish, is DENIED.

ENTERED FOR THE COURT:

/s/ Illegible
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 94-4712

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHALOM GENISH,
a/k/a Aaron Shalom Genish,
a/k/a Shalom Aaron Genish,
a/k/a Aaron Genish,

Defendant-Appellant.

On Appeal from the United States District Court for the Southern District of Florida

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(Filed Feb. 7, 1996)

ORDER:

Appellant filed a motion to recall this court's mandate, which should also be construed as a motion to stay this court's mandate pending the resolution of a petition for writ of *certiorari* to be filed before the Supreme Court.

Appellant's motion to recall the mandate is GRANTED.

Appellant's motion to stay this court's mandate pending *cert.* is GRANTED conditioned upon the filing of

the petition for certiorari written 30 days of the date of this order.

/s/ Stanley F. Birch, Jr.
UNITED STATES
CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, Plaintiff, v. **SHALOM GENISH, a/k/a Aaron Shalom Genish, a/k/a Aarom Genish,** Defendant.	Case No. **92-6173-CR-JAG(s)** **18 USC 1543** **18 USC 911** **18 USC 1001** **18 USC 1546(a)** **Magistrate Judge Snow** **SUPERSEDING INDICTMENT**

The Grand Jury charges that:

COUNT I

On or about October 30, 1990, at the United States Customs and Immigration checkpoint in Nassau, Bahamas, while en route to Broward County, traveling in foreign and interstate commerce and importing and moving himself through and into the Southern District of Florida, the defendant,

SHALOM GENISH,
a/k/a Aaron Shalom Genish,
a/k/a Aarom Genish,

did, wilfully and knowingly, use a false, counterfeited, mutilated, and altered passport, said instrument purporting to be a valid passport of the United States, in violation of Title 18, United States Code, Section 1543.

COUNT II

On or about October 30, 1990, before an Immigration Officer, at the United States Customs and Immigration checkpoint in Nasau, Bahamas, while en route to Broward County, traveling in foreign and interstate commerce and importing and moving himself through and into the Southern District of Florida, the defendant,

SHALOM GENISH,
a/k/a Aaron Shalom Genish,
a/k/a Aarom Genish,

an alien, did falsely and wilfully represent himself to be a citizen of the United States, when, in truth and in fact, as the defendant then and there well knew, he is a native of Libya and citizen of Israel, who at no time has been a citizen of the United States, in violation of Title 18, United States Code, Section 911.

COUNT III

On or about October 30, 1990, at the United States Customs and Immigration checkpoint in Nassau, Bahamas, while en route to Broward County, traveling in foreign and interstate commerce and importing and moving himself through and into the Southern District of Florida, the defendant,

SHALOM GENISH,
a/k/a Aaron Shalom Genish,
a/k/a Aarom Genish,

in a matter within the jurisdiction of the Department of The Treasury United States Customs Service, a Department and an agency of the United States, did knowingly

and wilfully make a false, fraudulent and fictitious written statement and representation as to a material fact, in that the defendant stated in a signed United States Customs Declaration (Customs Form 6059B) that he was a U.S. Citizen, when in truth and in fact, and as the defendant then and there well knew, he is a native of Libya and citizen of Israel, who at no time has been a citizen of the United States; in violation of Title 18, United States Code, Section 1001.

COUNT IV

On or about May 6, 1991, at the United States Customs and Immigration checkpoint in Nassau, Bahamas, while en route to Broward County, traveling in foreign and interstate commerce and importing and moving himself through and into the Southern District of Florida, the defendant

SHALOM GENISH,
a/k/a Aaron Shalom Genish,
a/k/a Aarom Genish,

in a matter within the jurisdiction of the Department of Justice Immigration & Naturalization Service, a Department and an agency of the United States, did knowingly and wilfully make a false, fraudulent and fictitious verbal statement and representation as to a material fact, in that, the defendant stated he never had a United States passport, but has a brother with the same name who has a United States passport. The defendant then insisted he did hold a United States passport, in addition to an Israeli passport, because he held dual citizenship in the United States as well as Israel. In truth and in fact, and as the

defendant then and there well knew, he purported to lawfully hold a U.S. passport on October 30, 1990, as set forth in Count I of this indictment, and the defendant is a native of Libya and citizen of Israel, who at no time has been a citizen of the United States; in violation of Title 18, United States Code, Section 1001.

COUNTS V THROUGH XII

1. The following matters are generally alleged with respect to Counts V through XII of this Indictment:

a. On or about February 5, 1988, at the United States Embassy in Seoul Korea, the defendant SHALOM GENISH, an Israeli national, did apply for and receive an "E-1 Nonimmigrant Visa" to enter the United States.

b. As part of the application for said Visa the defendant SHALOM GENISH was required to answer certain questions pertaining to his background and character, pursuant to Department of State Optional Form 156. Question 35 on that form, in pertinent part, noted:

> "IMPORTANT: ALL APPLICANTS MUST READ AND ANSWER THE FOLLOWING: A visa may not be issued to persons who are within specific categories defined by law as inadmissible to the United States (except when a waiver is obtained in advance). Complete information regarding these categories and whether any may be applicable to you can be obtained from this office. Generally, they include persons . . .
>
> ___ Arrested or convicted for any offense or crime even though subject of a pardon, amnesty, or other such legal action.
>
> * * *

United States District Court

SOUTHERN District of FLORIDA

UNITED STATES OF AMERICA

V.

SHALOM GENISH (01)
a/k/a Aaron Shalom Genish
#29652-0004
(Name of Defendant)

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number:
92-6173-CR-GONZALEZ

F. Lee Bailey,
1400 Centerpark Blvd. #909
West Palm Beach, FL 33401
Defendant's Attorney

Robert Cornell, AUSA

THE DEFENDANT:
_ pleaded guilty to count(s) N/A
X was found guilty on count(s) 1, 2, 3 & 4 of the superseding indictment after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18:1543	Use of a false or altered passport	10/30/90	One
18:911	Providing false information to a INS Officer	10/30/90	Two
18:1001	False Statements	10/30/90	Three
18:1001	False Statements	5/6/91	Four

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

_ The defendant has been found not guilty on count(s) N/A and is discharged as to such count(s).

X Count(s) any remaining (is) (are) dismissed on the motion of the United States.

X It is ordered that the defendant shall pay a special assessment of $ 200.00 for count(s) 1, 2, 3 & 4 of the sup'sed indict., which shall be due X immediately _ as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 592-44-5830

Defendant's Date of Birth: 10/10/46

Defendant's Mailing Address:

820 E. Coco Plum Circle
Plantation, FL 33324

Defendant's Residence Address:

June 24, 1994
Date of Imposition of Sentence

/s/ Jose A. Gonzalez, Jr.
Signature of Judicial Officer

Hon. Jose A. Gonzalez, Jr.
U.S. District Judge
Name & Title of Judicial Officer

June 27, 1994
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for

a term of THREE (3) MONTHS as to counts 1, 2, 3 & 4 of the superseding indictment. . To run concurrent one to the other, for a TOTAL period of confinement of THREE (3) MONTHS.

The defendant is continued on bond pending appeal.

_ The court makes the following recommendations to the Bureau of Prisons:

_ The defendant is remanded to the custody of the United States marshal.

_ The defendant shall surrender to the United States marshal for this district.

  _ at _____ a.m. / p.m. on _____.
  _ as notified by the United States marshal.

_ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons

  _ before 2 p.m. on _____.
  _ as notified by the United States marshal.
  _ as notified by the probation office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____ at _____ with a certified copy of this judgment.

_____
United States Marshal

By _____
Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of TWO (2) YEARS as to counts 1, 2, 3 & 4 of the superseding indictment, to run concurrent one to the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

X The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

X The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

X The defendant shall not possess a firearm or destructive device.

The defendant shall be required to provide full financial disclosure to the probation office as they may request.

If the defendant is deported, he shall not reenter the United States without the permission of the Attorney General. While out of the country the period of supervised release shall be nonreporting.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime in addition:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9))the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the

probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

FINE

The defendant shall pay a fine of $ 5,000.00. The fine includes any costs of incarceration and/or supervision.

X This amount is the total of the fines imposed on individual counts, as follows:

1, 2, 3 & 4 of the superseding indictment, concurrent fines for a TOTAL of $5,000.00.

_ The court has determined that the defendant does not have the ability to pay interest. It is ordered that:

_ The interest requirement is waived.
_ The interest requirement is modified as follows:

This fine plus any interest required shall be paid:
X in full immediately.
_ in full not later than _____.
_ in equal monthly installments over a period of ___ months. The first payment is due on the date of this judgment. Subsequent payments are due monthly thereafter.
_ in installments according to the following schedule of payments:

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

STATEMENT OF REASONS

Defendant Shalom Genish
Docket No. 92-6173-CR-GONZALEZ(s)

X The court adopts the factual findings and guideline application in the presentence report.

OR

_ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: ___ Criminal History Category: ___
Imprisonment Range: _____ months
Supervised Release Range: _____ to _____ years
Fine Range: $ _____ to $ _____

_ Fine is waived or is below the guideline range, because of the defendant's inability to pay.

Restitution: $ _____

_ Full restitution is not ordered for the following reasons(s):

X The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

_ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

The sentence departs from the guideline range:

_ upon motion of the government, as a result of the defendant's substantial assistance.
_ for the following reason(s):

_ The court orders transcript of Statement of reasons be attached.

DATE: June 24, 1994 /s/ Jose A. Gonzalez, Jr.
U.S. DISTRICT
COURT JUDGE